

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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CHRISTOPHER MUELLER,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,

Defendant.  
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ORDER

13-cv-514-bbc

Plaintiff Christopher Mueller filed this lawsuit in 2013, seeking review of an administrative decision denying his request for disability insurance benefits under the Social Security Act. This court initially affirmed denial of benefits, but the Court of Appeals for the Seventh Circuit reversed, and this case was remanded to the Commissioner of Social Security for further proceedings. Pursuant to the Equal Access to Justice Act, plaintiff's attorney was granted \$24,000.00 in attorney fees for this case. On remand, an administrative law judge concluded that plaintiff was disabled and entitled to past-due benefits of \$123,956.00. Plaintiff also was awarded two auxiliary awards for benefits.

Now plaintiff's attorney, Barry Schultz, seeks an award of attorney fees under 42 U.S.C. § 406(b) and the contingency agreement entered into between plaintiff and counsel. He seeks \$40,615.76 in fees, which is 25 percent of plaintiff's past-due benefits award of \$123,956.00 and the auxiliary awards, minus \$6,000 that was awarded already for work done at the administrative level. He also seeks an order requiring him to refund to plaintiff

the \$24,000.00 in Equal Access to Justice Act fees. (Schultz initially sought \$40,657.00 in fees, but both sides agree that the correct number is \$40,615.76.) The commissioner does not oppose Schultz's request. For the reasons below, I am granting the motion.

## OPINION

Under 42 U.S.C. § 406(b), the court may award a prevailing plaintiff's attorney a reasonable fee, but no greater than 25 percent of past-due benefits. Gisbrecht v. Barnhart, 535 U.S. 789, 792 (2002). See also McGuire v. Sullivan, 873 F.2d 974, 980 (7th Cir. 1989) ("A court may award a fee up to that provided in the [contingency-fee] contract so long as the court has reviewed its reasonableness."). When evaluating a request for fees under § 406(b) for reasonableness, a court may consider "the character of the representation and the results the representative achieved." Gisbrecht, 535 U.S. at 808. Courts in this circuit have considered factors such as the attorney's experience, reputation and ability, as well as awards in similar cases. Westlund v. Berryhill, No. 15-cv-450-jdp, 2017 WL 2389724, at \*1 (W.D. Wis. June 1, 2017) (citing Hodges-Williams v. Barnhart, 400 F. Supp. 2d 1093, 1099 (N.D. Ill. 2005), and McGuire, 873 F.2d at 979, 983)).

In this instance, counsel's fee request is reasonable. Counsel's records show that plaintiff's attorneys spent 78.7 hours at the court of appeals level and 53.4 hours in this court on matters related to court proceedings, including the preparation of a motion for summary judgment and successful appeal. Awarding counsel \$40,615.76 would be the equivalent of a rate of approximately \$307.46 an hour. In light of counsel's experience, the

risk he and his firm incurred and the amounts awarded by other courts in similar cases, I conclude that the amount is reasonable.

ORDER

IT IS ORDERED that Barry Schultz's motion for attorney fees, dkt. #44, is GRANTED and Schultz is awarded \$40,615.76 in fees under 42 U.S.C. § 406(b) to be paid from plaintiff Christopher Mueller's past due benefits. Schultz shall refund the Equal Access to Justice Act fee of \$24,000.00 to plaintiff.

Entered this 14th day of February, 2018.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge